



27 SEP 2005

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In re Application of :
Keim et al. :
Serial No. : 10/531,159 : DECISION ON
PCT No.: PCT/US03/32887 :
Int. Filing Date: 11 October 2003 : PETITION UNDER
Priority Date: 11 October 2002 :
Attorney's Docket No.: 112624.00029 : 37 CFR 1.10(d)
For: MOLECULAR SIGNATURE AND ASSAY FOR :
FLUOROQUINOLINE RESISTANCE IN *BACILLUS* :
ANTHRACIS :

This decision is in response to the "PETITION TO CORRECT A FILING DATE PRUSUANT TO 37 C.F.R. § 1.10(d)" filed 09 June 2005, requesting the Office to correct the national stage filing date.

BACKGROUND

On 11 October 2003, applicants filed international application PCT/US03/32887 that claimed priority of an earlier U.S. provisional application filed 11 October 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 02 December 2004. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 11 April 2005.

On 12 April 2005, applicants filed a letter for entry into the national stage in the United States which was accompanied by, *inter alia*, a declaration and the basic national fee of \$300. These papers were assigned U.S. Serial No. 10/531,159.

On 09 June 2005, applicants filed the current petition requesting that the above-identified application be accorded a national stage filing date of 11 April 2005.

DISCUSSION

37 CFR 1.10(d) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied items (1) and (2).

With respect to item (3), the Express Mail Label and the tracking information on the United States Postal Service website both indicate that the package was accepted on 12 April 2005. In order to refute this as the date of mailing, applicant has filed affidavits of Robert D. Atkins, William Bilyk, Maritza O'Neill and John Mitchell, along with a letter from Melanie Thomas of the United States Postal Service. Mr. Atkins states that he gave the package to Maritza O'Neill for filing with the USPTO. Ms. O'Neill states that she personally gave the package to Mr. Bilyk with instructions to mail the package the same day. She also states that Mr. Bilyk acknowledged receipt on that day, and placed the package in a bin designed for same day delivery to the United States Postal Service. Mr. Bilyk states that all packages were picked up by Mr. Mitchell on both the 11 April 2005 and the 12 April 2005 for delivery to the post office. Mr. Mitchell states that he picked up packages on both days and delivered the packages to the post office. Ms. Thomas states that upon further review, she had determined that the package was dropped off on 11 April 2005, and not the 12 April 2005.

Petitioner has not provided sufficient evidence from the USPS, as required under the rule. Specifically, Ms. Thomas fails to set forth the factual basis upon which her conclusion is based. If her conclusion was based on evidence provided to her by the law firm, then such would not constitute independent corroborating evidence.

Therefore, the application is abandoned.

Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived.

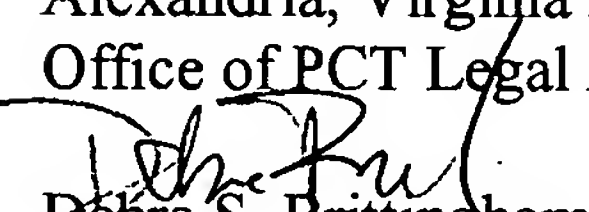
A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by (1) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," (2) a proper reply unless it has been previously submitted, and (3) the petition fee required by law for revival of an unintentionally abandoned application (1.17(m)). In this instance, the fee required by law for revival of an unintentionally abandoned application is \$1500. If applicant can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of a grantable petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the entire delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a grantable petition for revival under 37 CFR 1.137(b).

CONCLUSION

Applicant's petition to correct the national stage filing date to 12 April 2005 is hereby **DISMISSED**.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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Request for Legal Staff Consideration

Serial No. 10/531159

Date 17 June 2005

Request: Petition to correct filing date.

Requestor Christine Washington

Supervisor Cathy Short

Response: _____

By: _____

Date _____

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Legal Staff
International Division